

1-13-0233, 1-13-0328, & 1-13-3129, consolidated

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MARY PAUL,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee,)	Cook County
)	
v.)	11 OP 20308
)	
FRANK CALABRESE,)	Honorable
)	Callie Baird,
Respondent-Appellant.)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Presiding Justice Hyman and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not err in denying respondent's motion to vacate an agreed order of protection where the court issued a ruling on the merits and respondent's motion did not contain facts sufficient to entitle him to relief under section 2-1401. Similarly, the circuit court did not err in denying respondent's motion to reconsider and declining to withdraw his notice of appeal where the underlying motion had no merit. The order of protection is not unconstitutional as applied to the facts of this case where the protected parties and the proscribed conduct were clearly stated. The circuit court did not err in failing to transfer the petition for substitution for cause to another judge where the petition did not satisfy the statutory requirements for substitution. Finally, the circuit court did not err in extending the order of protection.

¶ 2 These consolidated appeals arise out of an order of protection sought and obtained by petitioner Mary Paul against respondent Frank Calabrese. Following the entry of an emergency order of protection in July 2011, an agreed plenary order of protection for a two-year period was entered in September 2011. In December 2012, Calabrese filed a motion to vacate or modify the plenary order of protection.

¶ 3 After the motion was denied, Calabrese filed a notice of appeal but later filed a motion to reconsider the denial of his motion to vacate and another motion to withdraw his notice of appeal pending a decision on his motion to reconsider. The motion to withdraw the notice of appeal was denied on January 17, 2013. Calabrese filed a second notice of appeal and the appeals were consolidated. In September 2013, Paul sought and obtained an extension of the existing plenary order of protection to October 3, 2013.

¶ 4 On appeal, Calabrese contends that (1) the circuit court erred in denying his motion to withdraw his notice of appeal pending a decision on his motion to reconsider the denial of his motion to vacate the 2011 order; (2) the circuit court erred in entering an emergency order of protection in 2011 because there were insufficient allegations of domestic violence; and (3) the 2011 agreed order of protection violated his first amendment rights. Calabrese further contends that (1) the circuit court erred in extending the 2011 order of protection while that order was on appeal; (2) the circuit court had no authority to extend the order where Calabrese filed a motion for substitution of judge for cause and that motion was never ruled on; (3) there were insufficient allegations of domestic violence to support extending the order; and (4) Calabrese's procedural due process rights were violated. After our review of the record and our consideration of Calabrese's various arguments, we affirm the judgment of the circuit court of Cook County.

¶ 5

BACKGROUND

¶ 6 Paul is Calabrese's biological mother. Paul gave Calabrese up for adoption in 1987. Calabrese eventually located her in September 2010 and attempted to establish a relationship with her.

¶ 7 Although Paul was initially open to a relationship, in July 2011 Paul filed a petition for an emergency order of protection. According to the petition, Calabrese misrepresented his circumstances to Paul and wanted a stronger relationship than Paul was interested in having. The petition alleged that Calabrese contacted Paul hundreds of times via email, text message, and phone calls. When Paul told Calabrese to stop calling so frequently, he became angry and began to call and email her employees, customers and attorneys, claiming that Paul abandoned him at birth. Attempts to block his emails failed because Calabrese kept changing his email address, so Paul filed a report with the Des Plaines police department. Calabrese then stopped sending emails to Paul's friends, employees and customers but began sending them to the police department instead.

¶ 8 Paul believed Calabrese was emotionally disturbed and unstable. Calabrese portrayed Paul as an evil woman who abandoned him but at the same time told her he loved her. Calabrese was verbally abusive to Paul and she did not want any contact with him because he wanted to control her and she and her family were afraid of him.

¶ 9 An emergency order of protection was entered on July 29, 2011. On the same date, Paul signed a complaint for harassment by electronic communication against Calabrese with the Des Plaines police department and Calabrese was charged criminally. After several extensions of the

emergency order of protection, the criminal case was transferred and consolidated with the emergency order of protection.

¶ 10 On September 28, 2011, Calabrese, represented by counsel, notified the circuit court that he had reached an agreement with the State. In exchange for the dismissal of the criminal charge, Calabrese agreed to a two-year no contact order of protection with an expiration date of September 28, 2013. Calabrese was read the terms of the plenary order of protection in open court and the order was subsequently entered by the court.

¶ 11 Between November 30, 2012, and December 10, 2012, Calabrese filed a series of *pro se* motions. He first filed a motion to dismiss the order of protection on the grounds that he did not harass Paul or do anything that would cause a reasonable family member to fear him, that the court lacked jurisdiction because neither of the parties resided in Cook County, and that the order was overly burdensome and defamatory. Calabrese claimed that the "grounds" for the motion were "supported by an attached affidavit" and a desire for Calabrese "to communicate with his natural mother, especially during the holiday season."

¶ 12 Calabrese then filed a motion to strike the first motion and replace it with a motion to dismiss or set aside the plenary order of protection. The new motion included the same grounds as the original motion, but added that the order prevented contact with his aunt and cousins. Calabrese later filed a motion for leave to amend and filed another motion to dismiss or set aside the plenary order, including additional paragraphs outlining his initial interactions with Paul and attaching over 100 pages of phone records and emails.

¶ 13 On December 10, 2012, Calabrese filed yet another motion to strike his latest amended motion and replace it with a motion to vacate or modify the plenary order of protection. Calabrese argued that the order of protection should be dismissed because all communication

with Paul was reasonable and did not constitute harassment. He denied misrepresenting himself to Paul, stated that she introduced him to family members, friends and employees, visited him, initiated phone calls and emails, and sent greeting cards. Calabrese argued that the order of protection prevented him from maintaining a relationship with his aunt and from contacting his cousins in furtherance of his genealogy hobby.

¶ 14 Calabrese further argued that Cook County was an improper venue and that he was falsely accused of harassment and was arrested and criminally charged. Calabrese claimed that he was the victim of malicious prosecution and defamation as a result of the criminal proceedings against him, and he only agreed to the order of protection so that the criminal charge against him would be dismissed. Calabrese argued that the circuit court had the authority to vacate or modify the order because he introduced phone records that he had been unable to obtain previously and showed due diligence in filing his motion as soon as he obtained them.

¶ 15 An order was entered on December 10, 2012, denying Calabrese's motion to vacate or modify the order of protection. According to the certified bystander report, the court gave the following reasons for the denial: (1) Calabrese submitted to the court's jurisdiction by filing an appearance and entering into an agreement for a two-year plenary order of protection; (2) there had been no change in applicable law or facts since the order was entered that warranted a modification of its terms; and (3) the motion did not state a basis for dismissal of the order of protection, Calabrese agreed to the order while represented by counsel, and Calabrese was present at the time the order was entered.

¶ 16 On January 7, 2013, Calabrese filed a notice of appeal from the court's December 10 order. However, two days later, Calabrese filed a motion to reconsider the December 10 ruling and, on January 17, filed a separate motion to withdraw his January 7 notice of appeal pending a

decision on the motion to reconsider. The circuit court denied the motion to withdraw the appeal on January 17 and Calabrese filed a second notice of appeal from that order on February 4, 2013. The appeals were subsequently consolidated.

¶ 17 Also in February 2013, Calabrese filed various *pro se* motions with the circuit court relating to bystander reports of the proceeding held on December 10, 2012, and January 17, 2013.

¶ 18 On March 1, 2013, this court entered an order in appeal No. 13-0233, directing the circuit court to determine the contents of a bystander report. At a hearing that same afternoon, Calabrese presented the circuit court with this court's order. The circuit court informed Calabrese that it was only required to certify what actually happened in the case and Calabrese's proposed report contained inaccuracies. The circuit court also stated for the record that Paul was not present at the hearing, and that the court had waived her presence because Calabrese had filed so many motions. The court set another hearing for March 7 and suggested that Calabrese reach out to Paul's counsel and amend the proposed bystander report.

¶ 19 On April 18, 2013, Calabrese filed another motion to certify the bystander reports of the December 10 and January 17 proceedings. On the same day, Calabrese also filed a petition for substitution of judge for cause. Calabrese argued that substitution for cause was appropriate because Judge Baird stated at the March 1 hearing that she had excused Paul from attending the hearing and, given that Calabrese was not present when Paul was excused, this communication was *ex parte*. Calabrese further argued that Judge Baird's orders "have been defective on their face," that she refused to let him argue his motions but simply denied them, that her continuance to certify the bystander report was excessive and arbitrary, and that she was also presiding over a criminal case in which Paul was the complainant against an individual who contacted one of

Paul's employees to ask Paul to reconcile with Calabrese. On April 22, 2013, Calabrese filed a motion for "courtroom decorum order," alleging that (1) the court officer passed a "secret" note to the judge, (2) the assistant State's Attorney was present at hearings on a civil matter, (3) a domestic violence advocate accompanied Paul to the hearing, (4) Paul's husband, a non-attorney, accompanied Paul to the podium, and (5) Paul showed exhibits to the judge without disclosing them first to Calabrese.

¶ 20 On April 25, 2013, the circuit court provided a summary of the proceedings to serve as a bystander report, explaining that the court refused to certify reports submitted by Calabrese because those reports were "replete with inconsistencies and inaccurate information." On April 30, 2013, Paul filed a *pro se* motion requesting that Calabrese be required to seek leave of the court prior to filing any additional motions. In support of her motion, Paul noted that Calabrese had recently filed a series of motions designed to harass Paul by requiring her to appear personally in court, incurring additional out-of-pocket costs and lost time away from work.

¶ 21 On June 5, 2013, a bond hearing was held in a second criminal case against Calabrese, who was represented by counsel. The assistant State's Attorney provided a background of the case, explaining that Calabrese began to file motions and appeals *pro se* contesting the agreed order of protection, forcing Paul to appear in court as a way to get around the order of protection and see Paul, whom "he claims to love and just wants to see." Calabrese put together two bound books of over 300 pages of filings and motions, including phone records, e-mails, ancestral information on Paul's family and other personal documents, and took them to Paul's attorney with the request that they be given to Paul. As a result of the continued harassment, Paul was suffering from severe emotional distress and was afraid for her safety. After Calabrese was

arrested, he admitted that he felt abandoned by Paul, he loves her, and he planned to contact her after the order of protection expired to apologize and explain his feelings.

¶ 22 On August 23, 2013, this court denied Calabrese's motion for sanctions against Paul. On August 26, 2013, this court also denied Calabrese's motion to strike the bystander report entered on April 25, 2013, by the circuit court.

¶ 23 On September 20, 2013, a hearing was held in the second criminal case against Calabrese and the State sought to file a violation of bail bond. The assistant State's Attorney provided a background of the case, explaining that one of the things that prompted the petition for the order of protection was that Calabrese sent email blasts to law firms that were clients of Paul's business with threatening information, including a letter written to an inmate in the Cook County jail with personal information about the lawyers and their family members. After Calabrese decided to appeal the agreed order of protection, he submitted numerous filings that were not related to the issue before the court, including extra documents that had nothing to do with the issues on appeal but that contained personal information about Paul and her marriage. On August 6, Calabrese filed over 241 pages that included pictures of Paul's dead relatives and their tombstones, a term paper that Paul had written when she went back to school, and various other documents that were not related to the order of protection and were meant to harass Paul. In addition to the court filings, thousands of pages of emails had been sent to Paul's attorney and other individuals in what was described by the assistant State's Attorney as "a deluge and bombardment of information and harassment" of Paul.

¶ 24 The State then raised the issue of the protective order, which would expire the following week. Calabrese's attorney stated that he would have no objection to an extension of the existing order. The State responded that it would be seeking a new order of protection. After Calabrese's

counsel reviewed the proposed order, he indicated to the court that Calabrese objected to the new order and a hearing date was set for October 3.

¶ 25 On September 25, 2013, the State filed a motion for an extension of the plenary order of protection due to continued harassment by Calabrese which led to an aggravated stalking charge. The State asked that the order be extended to October 3, 2013, and transferred to the courtroom where the felony case was pending. The assistant State's Attorney represented to the court that Calabrese's counsel said he had no objection to an extension until October 3. The circuit court continued the motion to the following day and asked that the State obtain agreement in writing for the extension.

¶ 26 The following day, the State informed the court that numerous unsuccessful attempts had been made to reach Calabrese's counsel, both via his office and his personal cell phone and that when a return call was made to his office, the assistant State's Attorney was put on hold and then the call was disconnected. When the assistant State's Attorney called back, there was no answer. The circuit court found that the new charge of aggravated stalking provided a basis to extend the order of protection.

¶ 27 The circuit court entered an order on September 26, 2013, extending the September 28, 2011, plenary order of protection to October 3, 2013. Calabrese filed a notice of appeal from that order on October 1. This court subsequently consolidated that appeal with the two previously consolidated appeals.

¶ 28 On October 17, 2013, Calabrese filed a motion in appeal No. 13-3129 to stay the order of protection. In his motion, Calabrese stated that the circuit court indefinitely extended the 2011 plenary order of protection. However, the supporting record filed by Calabrese contains an order

dated October 3, 2013, extending the order of protection to November 13, 2013. On October 18, 2013, this court denied Calabrese's motion to stay the order of protection.

¶ 29 ANALYSIS

¶ 30 A. Mootness

¶ 31 The order of protection that is the subject of this appeal was set to expire on September 28, 2013. A case on appeal becomes moot when the issues involved no longer exist because events occurring after the filing of the appeal make it impossible for the appellate court to grant effective relief. *In re Marriage of Peters-Farrell*, 216 Ill. 2d 287, 291 (2005). The case must then qualify for one of the exceptions to the mootness doctrine in order for this court to reach the merits of the appeal. *Felzak v. Hruby*, 226 Ill 2d 382, 392 (2008).

¶ 32 However, we note that it is not clear that this case is moot. The original order of protection was extended to October 3, 2013, an extension that is the subject of the consolidated appeal No. 13-3129. The supporting record for a motion filed in that case contains another order extending the plenary order of protection to November 13, 2013. The record indicates that the extensions were being sought until a hearing could be held on whether to extend the original order or to enter a new plenary order of protection. Therefore, it is not clear to this court whether the order that is the subject of these appeals has, in fact, expired.

¶ 33 In any event, orders of protection have routinely been reviewed under the public interest exception to the mootness doctrine. See, e.g., *Benjamin v. McKinnon*, 379 Ill. App. 3d 1013, 1020 (2008); *Creaser v. Creaser*, 342 Ill. App. 3d 215, 219 (2003); *Lutz v. Lutz*, 313 Ill. App. 3d 286, 288 (2000); *Whitten v. Whitten*, 292 Ill. App. 3d 780, 784-85 (1997). Therefore, we will consider the merits of these consolidated appeals.

¶ 34 B. Appeal Nos. 13-0233 and 13-0328

¶ 35 Although Calabrese raised three issues in the "Issues Presented for Review" section of his opening brief, he includes a fourth argument in the "Argument" section of his brief. Thus, Calabrese's arguments on appeal appear to be: (1) the circuit court erred in entering an emergency order of protection; (2) the plenary order of protection violated his first amendment rights; (3) the circuit court erred in denying the motion to vacate without ruling on its merits; and (4) the circuit court erred in refusing to withdraw his notice of appeal and rule on his motion to reconsider. In stating what he believes to be the applicable standard of review, Calabrese claims that "[t]his is an appeal from the entry of a civil plenary order of protection." However, despite the fact that under his first argument in his opening brief Calabrese requests that this court vacate both the emergency and plenary orders of protection, in his reply brief, Calabrese states that he is "not asking this [court] to vacate the order of protection, but rather to withdraw his first notice of appeal, *** so that he may [move] forward with a motion to reconsider the denial of his motion to vacate." In the next paragraph of the reply brief, Calabrese again states that he is not asking this court to vacate the order of protection, but to withdraw his notice of appeal "and to address the remedies of the order of protection at issue." Contradicting himself, Calabrese later states that he is asking this court "to vacate the remedies of the order of protection, which are not supported by the Illinois Domestic Violence Act."

¶ 36 A reviewing court is entitled to have arguments clearly stated with pertinent authority cited (Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013)) and is "not a repository into which the appellant may foist the burden of argument and research." *Velocity Investments, LLC v. Alston*, 397 Ill. App. 3d 296, 297 (2010). We note that the fact that Calabrese is representing himself does not excuse him from presenting clear arguments with citations to relevant authority to this court. It is well settled that *pro se* litigants are presumed to have full knowledge of applicable court rules

and procedures and must comply with such rules just as a litigant represented by an attorney would be required to do. See *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 528 (2001).

¶ 37 In light of Calabrese's confusing and inconsistent statements in his briefs regarding the relief that he is seeking from this court, we turn to the notices of appeal. In No. 13-0233, the notice of appeal states that Calabrese is appealing the December 10, 2012, order and the relief he is seeking from this court is to have the trial court rule on the merits of his motion to vacate the order of protection. In No. 13-0328, the notice of appeal repeats what was stated in No. 13-0233 and adds that he is appealing the denial of his motion to reconsider. The relief sought is for this court to remand the cause with directions to schedule a hearing on the merits of Calabrese's motion to vacate.

¶ 38 Calabrese filed his motion to vacate pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)). To obtain relief under section 2-1401, the petitioner must affirmatively set forth specific factual allegations in support of the following: (1) the existence of a meritorious defense or claim; (2) due diligence in presenting this defense or claim to the circuit court in the original action; and (3) due diligence in filing the section 2-1401 claim for relief. *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220-21 (1986). A litigant is not entitled to relief under section 2-1401 " 'unless he shows that through no fault or negligence of his own, the error of fact or the existence of a valid defense was not made to appear to the trial court.' " *Id.* at 222 (quoting *Brockmeyer v. Duncan*, 18 Ill. 2d 502, 505 (1960)).

¶ 39 Although a trial court's denial of relief under a section 2-1401 petition has historically been reviewed under the abuse of discretion standard (*id.* at 221), the standard of review is less clear after our supreme court's holding in *People v. Vincent*, 226 Ill. 2d 1 (2007). In *Vincent*, the court held that section 2-1401 dispositions involving judgment on the pleadings or dismissals for

failure to state a cause of action were subject to *de novo* review. *Id.* at 15. Subsequent appellate decisions have held that a *de novo* standard of review applies to the issue of whether the litigant presented a meritorious defense, an issue of law, while an abuse of discretion standard is appropriate in determining whether the litigant complied with the due diligence requirements, an issue that necessarily depends on findings of fact. See *Cavalry Portfolio Services v. Rocha*, 2012 IL App (1st) 111690, ¶ 10; *Rockford Financial Systems, Inc. v. Borgetti*, 403 Ill. App. 3d 321, 326-27 (2010); *Blazyk v. Daman Express, Inc.*, 406 Ill. App. 3d 203, 206 (2010). Although we agree with the reasoning in these decisions regarding the standards of review, we note that under either standard, Calabrese's argument fails.

¶ 40 Calabrese's entire argument on this issue consists of two paragraphs. Calabrese merely cites case law for the proposition that the circuit court retains the power to vacate or modify a protective order and must rule on the merits of a motion to vacate, and then argues that the trial court's reasons for denying his motion to vacate were conclusory. Although this argument is insufficient to satisfy the requirements of Rule 314(h)(7) (Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013)), we will nevertheless address this issue.

¶ 41 In the certified bystander report, which we note had to be prepared by the court because Calabrese's proposed report contained too many inaccuracies even after court-ordered revisions, the court stated the reasons for its denial of Calabrese's motion to vacate. The court explained that Calabrese entered into an agreed order of protection while represented by counsel and there had been no change in applicable law or facts since the order was entered that warranted a modification of its terms.

¶ 42 Calabrese argues that although it was an agreed order, he entered into the agreement under duress so that the criminal charge against him would be dismissed. In his motion to

vacate, the only new facts that Calabrese alleged and claimed that he could not have discovered previously were cell phone records showing that Paul made 75 calls to Calabrese. In support of his statement that he showed due diligence in the underlying action, Calabrese explained that he was previously unable to obtain the telephone records because the phone was in his adoptive father's name. Apart from that, Calabrese merely provided a litany of reasons for why (1) he did not think his actions constituted harassment, (2) he believed he was the victim of malicious prosecution, and (3) he thought the order of protection was overly burdensome. Calabrese also stated that he showed due diligence in filing the section 2-1401 petition because he is not an attorney and originally thought that filing a motion to vacate would constitute a violation of the order of protection if he attempted to serve Paul.

¶ 43 Calabrese's argument that the trial court did not rule on the merits of his motion to vacate is not supported by the record. The bystander report clearly demonstrates that the trial court ruled on the merits of the motion. Similarly, Calabrese's argument that the trial court erred in denying his motion to vacate also fails. Calabrese is not entitled to relief under section 2-1401 because he has not alleged sufficient facts in support of a meritorious defense nor has he demonstrated that he exercised due diligence in either the underlying action or the filing of the 2-1401 petition.

¶ 44 In the underlying action, Calabrese was represented by counsel and entered into an agreed order. Calabrese cannot claim he exercised due diligence where none of the facts listed in his motion to vacate were unknown to Calabrese at the time, including the number of phone calls made by Paul or the fact that the phone was in his adoptive father's name. Moreover, even if these facts had been presented to the trial court, they do not constitute a meritorious defense because they have no bearing on the order of protection. The basis for the order of protection

had nothing to do with the fact that Paul was initially open to establishing a relationship with Calabrese, and these facts do not provide any grounds for modifying or vacating the order.

¶ 45 Calabrese has also not alleged sufficient facts to establish that his decision to enter into the agreed order on the advice of counsel was made under duress. There are no facts to indicate that Calabrese's counsel was incompetent or that Calabrese did not enter into the agreement with full knowledge that he was gaining the benefit of dismissal of the criminal charge in exchange. Even if Calabrese believed the criminal charge was unfounded, that fact alone is not sufficient to support an allegation that the agreement was made under duress. Calabrese was represented by counsel and has not alleged any facts that would indicate that his counsel was remiss in advising him to agree to the entry of an order of protection in exchange for the dismissal of the criminal charge. Indeed, Calabrese has alleged no facts in his motion that would cause this court to conclude that this is anything other than a poorly disguised attempt to gain the benefit of dismissal of the criminal charge by agreeing to the order of protection, and then challenging the agreed order once his criminal record was expunged on grounds for which he can provide no supporting factual allegations.

¶ 46 Finally, Calabrese's claim that he exercised due diligence in filing his 2-1401 petition is unavailing. He merely claims that as a non-attorney, he thought that he could not file the petition without violating the protective order. However, clarification of that point could have been obtained by a simple call to his attorney in the underlying action. Calabrese obviously eventually learned that this was not, in fact, the case, but offers no facts to support why he was unable to obtain this clarification prior to November 2012.

¶ 47 The circuit court's ruling appears to be based on the grounds that Calabrese failed to raise a meritorious defense. As discussed above, Calabrese has not demonstrated that the circuit court

erred as a matter of law. Moreover, to the extent that the circuit court's ruling was also based on a determination that Calabrese failed to exercise due diligence, Calabrese has not established that the circuit court abused its discretion. Thus, because Calabrese has not met the requirements for obtaining relief pursuant to section 2-1401, the circuit court did not err in denying the motion.

¶ 48 Calabrese devotes the majority of his brief to arguments related to the constitutionality of both the Domestic Violence Act of 1986 (Act) (750 ILCS 60/101, *et seq.* (West 2012)) and the plenary order of protection. Given that Calabrese has also repeatedly stated that he is not asking this court to vacate the plenary order of protection but simply to remand so that his motion to vacate may be considered on the merits, we do not understand what relief Calabrese is seeking from this court. Nevertheless, to the extent that we are able to decipher these arguments, we will address them.

¶ 49 As an initial matter, all of Calabrese's arguments are phrased in terms of "Judge Baird's remedies." Calabrese contends that the trial court "had no authority" to enter a remedy that prohibited contact with "extended family members, professional or social affiliates regarding protected parties," and prohibited "posting of information regarding the protected parties." Calabrese then claims that the circuit court "effectively created a[n] unconstitutionally vague criminal statute that restricts the first amendment."

¶ 50 These arguments make no sense. First, the plenary order of protection entered by the circuit court was an agreed order, reviewed by Calabrese's attorney. Moreover, even if the circuit court had dictated the terms of the order, those terms are governed by statute and would not be the personal remedies of a particular judge, nor can a judge "create" a statute. Therefore, we can only address Calabrese's arguments in terms of a challenge to the constitutionality of the Act.

¶ 51 All statutes are presumed to be constitutional and the party challenging the constitutionality of a statute bears the burden of clearly demonstrating a constitutional violation. *People v. Wilson*, 214 Ill. 2d 394, 398-99 (2005). Whenever reasonably possible, a statute must be construed so as to affirm its constitutionality and validity. *Id.* at 399. The constitutionality of a statute is a question of law which we review *de novo*. *People v. Dabbs*, 239 Ill. 2d 277, 291 (2010).

¶ 52 Calabrese's primary argument appears to be that the Act is unconstitutional as applied to him because the remedies afforded by the Act are overly broad and vague and proscribe innocent conduct. Calabrese complains that under the terms of the protective order, he may be criminally punished for posting information about the protected parties, even if that information is innocent in nature.

¶ 53 There are two ways in which a litigant may challenge a statute as unconstitutionally vague: (1) on its face, or (2) as applied to the litigant's actions. *People v. Einoder*, 209 Ill. 2d 443, 448 (2004). The constitutionality of the Act itself has been previously affirmed with respect to vagueness and overbreadth challenges. See *In re Marriage of Hagaman*, 123 Ill. App. 3d 549, 553-54 (1984); *People v. Blackwood*, 131 Ill. App. 3d 1018, 1023 (1985); *People v. Whitfield*, 147 Ill. App. 3d 675, 681-82 (1986); *People v. Reynolds*, 302 Ill. App. 3d 722, 727-28 (1999). Because the Act contemplates the protection of a potential victim from the universe of physical and psychological abuses, it cannot be expected to address every conceivable form of abuse and a certain measure of generality must therefore be tolerated. *Blackwood*, 131 Ill. App. 3d at 1023.

¶ 54 Calabrese's as-applied challenge also fails. Calabrese appears to be under the misapprehension that because the protective order prohibits him from contacting the protected parties or posting information about them, the statute is vague as applied because the contact or

the posted information could be innocent. This argument has no merit on its face. Under this interpretation, all protective orders would be vague as applied because any contact with the protected parties could potentially be innocent. But under the terms of the order, Calabrese is specifically prohibited from having any contact, innocent or otherwise, with the protected parties and from posting any information about them. There is nothing about these facts to support a vagueness challenge.

¶ 55 Calabrese further contends that because the mere act of filing pleadings in court constitutes a violation of the order of protection, the Act proscribes constitutionally protected conduct. Calabrese misses the point entirely. The order of protection prohibits the harassment of Paul and her immediate family members. Calabrese is attempting to characterize the situation as one in which he is simply filing legal documents that he has every right to file and, because of his actions, he is being wrongfully prosecuted or risks being found in violation of the order. However, the record is clear that Calabrese is determined to make contact with Paul by any means at his disposal, despite the protective order, and is abusing the legal system to that end. Calabrese has filed a litany of frivolous motions in the trial court, including a motion to complain about the behavior of various people such as Paul's husband, an officer of the court, a domestic violence advocate, and the judge herself. These motions are devoid of merit and appear to be ill-disguised attempts to (1) force Paul to appear in court so that he can see her, (2) control the actions of the people around her and the legal proceeding itself, and (3) unnecessarily increase both the costs of litigation and the personal costs to Paul by forcing her to miss work. Such actions do not fall under the category of constitutionally protected conduct. We conclude that Calabrese has not demonstrated that the Act is unconstitutionally vague or overbroad either on its face or as applied to him.

¶ 56 Finally, Calabrese contends that the circuit court erred in refusing to withdraw his appeal and rule on his motion to reconsider. The only indication of the circuit court's ruling on January 17, 2013, is a notation in the bystander report that Calabrese's motion to withdraw his notice of appeal was denied based on lack of jurisdiction. In support of his argument, Calabrese cites to Supreme Court Rule 309 (eff. Feb. 1, 1981), which allows a trial court to dismiss an appeal before the record on appeal is filed. We note that although a trial court is allowed to dismiss an appeal under these conditions, it is not required to do so. Because we have previously concluded that Calabrese's motion to vacate was correctly denied, the circuit court did not err in refusing to withdraw his notice of appeal and rule on his motion to reconsider.

¶ 57 C. Appeal No. 13-3129

¶ 58 Calabrese further contends that he did not harass Paul, that the circuit court erred in extending the order of protection while it was under appeal, that the circuit court erred in failing to transfer his petition for substitution of judge for cause to another judge for hearing, and that his due process rights were violated. Calabrese's due process arguments fall under two categories: (1) lack of notice of the September hearing at which the order of protection was extended, and (2) the behavior of the assistant State's Attorney.

¶ 59 Calabrese's argument regarding the conduct of the assistant State's Attorney is not properly before this court and will be disregarded. The assistant State's Attorney is not a party to the underlying action, this court cannot provide the relief Calabrese is seeking, namely, to determine whether the assistant State's Attorney "exhibited prosecutorial misconduct," and Calabrese has not complied with Rule 314(h)(7) (Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013)) in that he has included no citations to relevant authority in support of this argument.

¶ 60 Calabrese also fails to cite relevant authority in support of his argument that the circuit court lacked the authority to extend the order of protection because the order was on appeal. Moreover, this argument is devoid of merit on its face. If we were to accept the validity of this argument, it would allow anyone who wishes to prevent the extension of an order of protection to simply file an appeal of that order.

¶ 61 Calabrese's arguments regarding whether his actions constituted harassment also have no merit. As one of the issues presented for review, Calabrese lists "[w]hether the petitioner's allegations of domestic violence were sufficient to enter a plenary order of protection on September 26, 2013." Calabrese then proceeds to argue that none of his actions, including those that led to the entry of the agreed order in 2011 and those that led to an extension of the order in 2013, constituted domestic violence or harassment. However, the record is replete with information that supports the conclusion that Calabrese's actions constituted harassment. Moreover, as we have noted, the underlying order of protection was an agreed order.

¶ 62 Calabrese's argument that his due process rights were violated because he did not receive notice of the September 2013 hearing at which the judge extended the order of protection is also unavailing. At the hearing on September 20, 2013, Calabrese's counsel stated on record that he would have no objection to an extension of the existing order. Although we appreciate that the circuit court delayed its decision for one day in an attempt to get this agreement in writing, it was not necessary to do so. The expiration date of the plenary order of protection and the request for an extension of that order until the next hearing date was known to all parties and the entry of such an extension did not constitute a violation of Calabrese's due process rights.

¶ 63 Finally, Calabrese argues that because his petition for substitution of judge for cause was never ruled on, the circuit court's subsequent order extending the order of protection to

October 3, 2013, and transferring the case to the criminal division was void. Again, this argument is without merit.

¶ 64 A party's right to have a hearing in front of another judge on a petition for substitution for cause is not automatic. *In re Estate of Wilson*, 238 Ill. 2d 519, 553 (2010). The party seeking such relief must first bring himself within the provisions of the statutory requirements. *Id.* In addition to filing a petition that is verified by affidavit, the petition must also adequately allege grounds that, if true, would justify granting substitution for cause. *Id.* at 553-54. A judge's previous rulings almost never constitute a valid basis for a claim of judicial bias or partiality. *Id.* at 554.

¶ 65 Calabrese's petition does not satisfy the requirements of the statute. He merely complains about the judge's previous rulings, actions and comments, none of which rise to the level of displaying such a "deep-seated favoritism or antagonism that would make fair judgment impossible" (internal quotation marks omitted). See *id.* (quoting *Eychaner v. Gross*, 202 Ill. 2d 228, 281 (2002)). Although Calabrese also references the trial judge's involvement in a separate proceeding, his petition does not specify what opinion may have been derived from this proceeding that would demonstrate bias.

¶ 66 Moreover, it has long been recognized that where it is apparent that the request for substitution is not made in good faith but for purposes of delay, the denial of a motion to substitute does not constitute error. *Id.* at 557. For all of these reasons, we conclude that the circuit court did not err in failing to transfer the petition for substitution for a hearing by another judge.

¶ 67

D. Sanctions

¶ 68 Finally, Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994) provides that if a reviewing court determines that an appeal is frivolous, or that it was not taken in good faith or for an improper purpose, an appropriate sanction may be imposed upon the party or the attorney of the party. The imposition of sanctions is a matter left strictly to the appellate court's discretion. *Residential Carpentry, Inc. v. Worker's Compensation Comm'n*, 389 Ill. App. 3d 975, 976 (2009).

¶ 69 In the exercise of this discretion, we decline to impose sanctions in these consolidated appeals, even though these appeals have no merit and appear to have been filed for the improper purpose of harassing Paul. Calabrese has also filed numerous motions in this court, just as he has done in the lower court, that are likewise improper and lacking in merit. However, we expect that Calabrese, having been admonished, will be more circumspect in bringing matters before this court. The record is replete with examples of Calabrese abusing the legal system and repeatedly filing frivolous motions devoid of legal merit. While a party has a right to appeal, a party does not have the right to use the legal system for improper purposes such as to harass and to needlessly increase the cost of litigation (see also Ill. S. Ct. R. 137(a) (eff. July 1, 2013) (the trial court may impose sanctions on a party for filing motions for improper purposes)). We are not likely to indulge any presumptions of good faith in Calabrese's favor in the future.

¶ 70 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 71 Affirmed.